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13 March 1987

NOTE TO: D/OSWR
D/OGI

SUBJECT: Omnibus Trade Act of 1987, S. 490

Please take appropriate action on the
attached memo. If you have any comments,
contact (OCA) directly.

Thanks,

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EA/DDI

Attachment

cc: C/TTAC

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10 March 1987
OCA 87-0846

MEMORANDUM FOR: Executive Director
Chairman, National Intelligence Council
Deputy Director for Intelligence

FROM: [redacted] Legislation Division
Office of Congressional Affairs

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SUBJECT: Omnibus Trade Act of 1987, S. 490

REFERENCE: OCA 87-0746

1. Attached are portions of the above-captioned bill which involve trade as it relates to national security. These sections are similar to measures incorporated in several other Senate bills which are explained in the referenced memorandum. We are bringing this matter to your attention because it is quite possible that some form of S. 490 or the other bills will be passed in this session of Congress and the interests of the Agency may be affected.

2. Section 411 requires the United States Trade Representative to monitor the transfer of technology between the United States and foreign countries. An annual report on this issue will be submitted to Congress. Section 501 amends the Trade Expansion Act of 1962 to require the President to take prompt action with respect to imports which threaten the national security. Section 603 establishes a National Trade Data Committee, of which the Director of Central Intelligence would be a member, to collect and disseminate data on international trade matters.

3. If you have any questions or comments on these sections, please telephone me on [redacted]

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Attachment

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(2) United States firms that rely on intellectual property protection are among the most advanced and competitive in the world;

(3) foreign barriers, including restrictions and conditions on investment, licensing, and various other regulatory restrictions on business operations, seriously impede the ability of United States firms that rely on intellectual property protection to operate overseas thereby harming the economic interests of the United States;

(4) improvement in intellectual property rights protection will come about through a combination of negotiation, vigorous enforcement of United States trade laws, and training of developing country officials in the enactment and enforcement of trademark, copyright, and patent laws;

(5) an overall strategy is needed to eliminate the broad variety of unfair and discriminatory trade practices now imposed on United States firms that rely on intellectual property protection;

(6) foreign government requirements to transfer technology or divulge technical data as a condition to importation are unreasonable burdens on United States commerce, result in inequitable flows of technology,

1 and further risk inadequate protection of intellectual
2 property;

3 (7) the enormous disparity in technology flows is a
4 major factor in the trade gap between the United
5 States and several of its trading partners;

6 (8) access to basic research and technology devel-
7 oped in foreign countries, including government-owned
8 or government-sponsored research, is essential to
9 achieve reciprocity in international competition; and

10 (9) equitable technology exchange should be both
11 a bilateral and multilateral negotiating objective.

12 **SEC. 412. MONITORING OF TECHNOLOGY TRANSFERS.**

13 (a) **IN GENERAL.**—The United States Trade Represent-
14 ative, in conjunction with the National Science Foundation,
15 shall continually monitor the transfer of technology between
16 the United States and foreign countries.

17 (b) **REPORT.**—The United States Trade Representative,
18 in conjunction with the National Science Foundation, shall
19 prepare an annual report on the transfer of technology be-
20 tween the United States and foreign countries and include
21 such report in the report submitted to Congressional commit-
22 tees under section 181(b)(1) of the Trade Act of 1974 (19
23 U.S.C. 2241(b)(1)).

1 SEC. 413. MONITORING FOREIGN INTELLECTUAL PROPERTY
2 SYSTEMS.

3 The Secretary of Commerce shall designate a Foreign
4 Commercial Service Officer in a foreign country to be respon-
5 sible for monitoring and reporting on the status of the intel-
6 lectual property system in such country, including responsi-
7 bility for—

8 (1) the maintenance of current files on intellectual
9 property protection afforded on a sector-by-sector basis
10 by such country;

11 (2) the filing of an annual report with the Secre-
12 tary of Commerce on changes to such laws in each
13 sector; and

14 (3) upon request, informing potential United
15 States exporters and foreign direct investors of protec-
16 tion afforded intellectual property rights in such
17 country.

18 SEC. 414. FOREIGN ASSISTANCE FOR DEVELOPMENT OF PRO-
19 GRAMS TO PROTECT INTELLECTUAL PROPERTY
20 RIGHTS.

21 Chapter 1 of part I of the Foreign Assistance Act of
22 1961 is amended by adding at the end thereof the following
23 new section:

24 "SEC. 129. PROTECTION OF INTELLECTUAL PROPER-
25 TY RIGHTS.—(a) The Congress finds that the adequate pro-
26 tection of intellectual property rights should be an important

1 element to the commercial, market, and economic develop-
2 ment of developing countries encouraged by this chapter.

3 “(b)(1) The President is authorized to furnish assistance,
4 after consultation with the Secretary of Commerce, on such
5 terms and conditions as he may determine, for programs to
6 aid less developed countries in developing and implementing
7 adequate intellectual property laws and in developing their
8 own indigenous technology.

9 “(2) The Secretary of Commerce, acting through the
10 Patent and Trademark Office and the United States Copy-
11 right Office, shall identify the technical assistance needs of
12 less developed countries under this section.

13 “(c) The assistance described in subsection (b) shall—

14 “(1) help provide less developed countries with
15 the resources necessary for the design, development,
16 administration, implementation, and enforcement of a
17 system of intellectual property laws;

18 “(2) emphasize the creation of a capability within
19 the developing countries to engage in indigenous re-
20 search and development and to generate the technol-
21 ogies necessary for their economic and social develop-
22 ment;

23 “(3) help build intellectual property systems nec-
24 essary for a domestic environment capable of support-
25 ing research and development;

“(4) expand current programs to aid the development of the research and development capability itself, in exchange for adequate protection of all forms of intellectual property, for foreign as well as domestic innovators; and

“(5) coordinate bilateral scientific exchange programs with the public and private sector to help stimulate local research and development.

“(d) Notwithstanding any other provision of this chapter, funds appropriated pursuant to this chapter shall be available to carry out the provisions of this section.”.

SEC. 415. UNITED STATES INTELLECTUAL PROPERTY TRAINING INSTITUTE.

(a) ESTABLISHMENT OF INSTITUTE.—The Secretary of Commerce, in cooperation with the representatives described in subsection (b), shall establish the United States Intellectual Property Training Institute (hereinafter in this section referred to as the “Institute”).

(b) BOARD OF INSTITUTE.—The Institute shall be directed by a Board including representatives of—

- (1) the Department of Commerce;
- (2) the Patent and Trademark Office;
- (3) the Copyright Office;
- (4) the United States Trade Representative;

1 (5) the United States Agency for International
2 Development; and

3 (6) executives of United States corporations which
4 need protection of intellectual property rights in do-
5 mestic and foreign operations, who shall be designated
6 by the Secretary after consultation with relevant indus-
7 try sector advisory committees established pursuant to
8 section 135 of the Trade Act of 1974 (19 U.S.C.
9 2155).

10 (c) PURPOSES OF THE INSTITUTE.—

11 (1) The purpose of the Institute is to train individ-
12 uals of developing nations in both management and
13 technical skills regarding the protection of intellectual
14 property. Such training shall include individuals who
15 are involved in patent and copyright protections
16 through any government agencies dealing with such
17 protections.

18 (2) The Institute shall provide training which may
19 include—

20 (A) recommendations for enforcement of in-
21 tellectual property laws;

22 (B) guidelines for the adoption of such an in-
23 tellectual property law, provisions of a model law,
24 or suggestions for amendments to any such exist-
25 ing law; and

(C) instruction regarding the philosophy of such a law and policy considerations involved in the adoption or amendment, and enforcement of such law.

(d) FINANCING.—

(1) The Institute shall be established, supported, and maintained by nongovernmental funds and financing. No Federal funds are authorized by this section to be appropriated to establish, support, or maintain the Institute.

(2) Nothing in this subsection may be construed to preclude the Agency for International Development, or any other Federal agency or department, from participating in the activities of the Institute or from making loans or grants to the Institute that are authorized under any provision of law other than this section.

TITLE V—NATIONAL SECURITY

SEC. 501. IMPORTS THAT THREATEN NATIONAL SECURITY.

(a) IN GENERAL.—Subsection (b) of section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862) is amended—

(1) by striking out “Upon request” and inserting in lieu thereof “(1) Upon request”,

(2) by striking out “, Secretary of Commerce,”,

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1 (3) by striking out "Secretary of the Treasury"
2 and inserting in lieu thereof "Secretary of Commerce",

3 (4) by striking out "within one year after receiv-
4 ing an application from an interested party or other-
5 wise beginning" and inserting in lieu thereof "by no
6 later than the date that is 6 months after the date on
7 which the Secretary receives a request for an investi-
8 gation under this section or on which the investigation
9 otherwise begins", and

10 (5) by adding at the end thereof the following new
11 paragraphs:

12 "(2)(A) The Secretary shall immediately notify the Sec-
13 retary of Defense of any investigation initiated under para-
14 graph (1) with respect to imports of an article. Upon receiv-
15 ing such notice, the Secretary of Defense shall conduct a
16 separate defense needs assessment with respect to such
17 article.

18 "(B) By no later than the date that is 3 months after the
19 date on which the investigation under paragraph (1) of im-
20 ports of an article is initiated, the Secretary of Defense shall
21 complete the defense needs assessment conducted under sub-
22 paragraph (A) with respect to such article and submit to the
23 Secretary a report on the assessment. Such report shall be
24 submitted by the Secretary to the President with (and be

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h (and be

1 considered a part of) the report that the Secretary is required
2 to submit to the President under paragraph (1).

3 “(3)(A) The report submitted by the Secretary under
4 paragraph (1) shall include a written statement by the Secre-
5 tary of Defense expressing concurrence or disagreement with
6 the findings and recommendations of the Secretary contained
7 in such report and the reasons for such concurrence or dis-
8 agreement.

9 “(B) The report submitted by the Secretary under para-
10 graph (1), or any portion of such report (including the report
11 submitted by the Secretary of Defense under paragraph
12 (2)(B)), may be classified only if public disclosure of such
13 report, or of such portion of such report, would clearly be
14 detrimental to the security of the United States.

15 “(C) Any portion of the report submitted under para-
16 graph (1) which—

17 “(i) is not classified in accordance with subpara-
18 graph (B), and

19 “(ii) is not proprietary information described in
20 paragraph (7)(A),

21 shall be published in the Federal Register.

22 “(4)(A) The President shall take action, or refuse to
23 take action, under paragraph (1) with respect to any report
24 submitted under paragraph (1) by no later than the date that

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1 is 90 days after the date on which such report is submitted to
2 the President.

3 “(B) The President shall make a written statement of
4 the reasons why the President has decided to take action, or
5 refused to take action, under paragraph (1) with respect to
6 each report submitted to the President under paragraph (1).
7 Such statement shall be included in the report published
8 under subsection (d).”.

9 (b) CLARIFYING AMENDMENT.—Subsection (d) of sec-
10 tion 232 of the Trade Expansion Act of 1962 (19 U.S.C.
11 1862) is amended by inserting “in the Federal Register”
12 after “published”.

13 **TITLE VI—FORMULATION OF** 14 **UNITED STATES TRADE POLICY**

15 **SEC. 601. TRADE IMPACT STATEMENTS.**

16 (a) DEPARTMENT AND AGENCY ACTIONS.—

17 (1) Except as otherwise provided in this subsec-
18 tion, the head of each department and agency of the
19 Federal Government shall, before taking any major
20 action that may affect international trade—

21 (A) study the potential impact such action
22 will have on—

23 (i) the international trade of the United
24 States, and

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submitted to 1 (ii) the ability of United States firms to
2 compete in foreign markets,
statement of 3 (B) prepare a detailed statement on such
4 the action, or 4 study, and
5 (C) make such statement available to the
6 paragraph (1). 6 public.
7 (2) In the case of emergency action, the statement
8 required under paragraph (1)(B) may be published im-
9 mediately after the actions affecting international trade
10 is taken.
11 (3) The provisions of this subsection shall not
12 apply with respect to actions taken under the Trading
13 With The Enemy Act.
14 (4) The provisions of this subsection shall not
15 apply to actions that are the subject of a report or con-
16 sultation required under the Export Administration
17 Act, but such a report or consultation shall include a
18 statement on the impact such action will have on—
19 (A) the international trade of the United
20 States, and
21 (B) the ability of the United States to com-
22 pete in foreign markets.
23 (b) LEGISLATION.—The head of each department and
24 agency of the Federal Government shall include with any
25 reports or recommendations made to the Congress regarding

1 proposed legislation, a detailed statement of the impact of
2 such legislation on—

3 (1) the international trade of the United States,
4 and

5 (2) the ability of United States firms to compete
6 in foreign markets.

7 SEC. 602. NATIONAL TRADE COUNCIL.

8 (a) IN GENERAL.—Section 242 of the Trade Expansion
9 Act of 1962 (19 U.S.C. 1872) is amended to read as follows:

10 “SEC. 242. NATIONAL TRADE COUNCIL.

11 “(a) ESTABLISHMENT.—There is hereby established in
12 the Executive Office of the President a council to be known
13 as the National Trade Council (hereafter referred to in this
14 section as the ‘Council’).

15 “(b) MEMBERSHIP.—The Council shall be composed
16 of—

17 “(1) the President;

18 “(2) the Vice President;

19 “(3) the Secretary of State;

20 “(4) the Secretary of the Treasury;

21 “(5) the Secretary of Defense;

22 “(6) the Secretary of Agriculture;

23 “(7) the Secretary of Commerce;

24 “(8) the Secretary of Labor; and

25 “(9) the United States Trade Representative.

1 “(c) **PRESIDING OFFICER.**—The President shall preside
2 over meetings of the Council. In the President’s absence, the
3 United States Trade Representative shall preside over meet-
4 ings of the Council.

5 “(d) **FUNCTIONS.**—

6 “(1) The Council shall advise the President with
7 respect to the integration of national and international
8 policies relating to trade so as to enable the President
9 and the departments and agencies of the Federal Gov-
10 ernment to cooperate more effectively in matters in-
11 volving international trade.

12 “(2) In addition to performing such other func-
13 tions as the President may direct, for the purposes of
14 more effectively coordinating the policies and functions
15 of the departments and agencies of the Federal Gov-
16 ernment relating to international trade and making rec-
17 ommendations to the President, the Council shall, sub-
18 ject to the direction of the President—

19 “(A) assess and appraise the international
20 trade policies (including commodity and direct in-
21 vestment matters) and international trade objec-
22 tives of the United States,

23 “(B) consider policies on matters of common
24 interest to the departments and agencies of the

1 (b) TRADE POLICY COMMITTEE.—The Trade Policy
2 Committee shall terminate on the date of enactment of this
3 Act.

4 SEC. 603. NATIONAL TRADE DATA BANK.

5 (a) NATIONAL TRADE DATA COMMITTEE.—

6 (1) There is hereby established the “National
7 Trade Data Committee” (hereafter in this section re-
8 ferred to as the “Committee”).

9 (2) The Committee shall consist of—

10 (A) the United States Trade Representative,

11 (B) the Commissioners of the United States

12 International Trade Commission,

13 (C) the Secretary of Commerce,

14 (D) the Secretary of Agriculture,

15 (E) the Secretary of State, and

16 (F) the Director of Central Intelligence.

17 (3) The chairman of the United States Interna-
18 tional Trade Commission shall be the chairman of the
19 Committee.

20 (b) FUNCTIONS.—

21 (1) The Committee shall, through coordination of
22 the actions of the agencies of the Federal Govern-
23 ment—

24 (A) establish and maintain a National Trade
25 Data Bank,

1 (B) provide for the analysis of information in
2 the National Trade Data Bank,

3 (C) disseminate such information in a timely
4 manner to business firms in the private sector that
5 are engaged in export related activities, and

6 (D) coordinate the gathering and dissemina-
7 tion of commercial information relating to interna-
8 tional trade by the Federal Government.

9 (2) The National Trade Data Bank which is re-
10 quired to be established under paragraph (1) may con-
11 sist of economic and trade data collected by the Feder-
12 al Government, including (but not limited to)—

13 (A) information on each foreign country such
14 as—

15 (i) the general economic conditions and
16 demographics,

17 (ii) common business practices,

18 (iii) tariffs and trade barriers, and

19 (iv) other laws and regulations regard-
20 ing imports and licensing;

21 (B) information on specific industrial sectors
22 within each foreign country such as—

23 (i) size of the market,

24 (ii) distribution of products,

25 (iii) competition,

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information in	1	(iv) applicable laws, regulations, speci-
	2	cations, and standards,
in a timely	3	(v) consultants,
the sector that	4	(vi) appropriate government officials,
s, and	5	and
d dissemina-	6	(vii) trade associations;
g to interna-	7	(C) information on specific business opportu-
nt.	8	nities in each foreign country;
which is re-	9	(D) general import and export data for the
(1) may con-	10	United States and for each foreign country;
y the Feder-	11	(E) industry specific import and export data
o)—	12	for each foreign country;
country such	13	(F) product and service specific import and
	14	export data for the United States;
aditions and	15	(G) market penetration ratios for imports to
	16	the United States and country of origin for im-
es,	17	ports to the United States;
and	18	(H) rank ordered national destinations for ex-
ons regard-	19	ports of the United States;
	20	(I) exchange rates of all foreign currencies;
rial sectors	21	(J) market research, including industry and
	22	demographic trends for each foreign country with
	23	lists of marketing contacts and lists of foreign
	24	firms;

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1 (K) product and process patent, copyright,
2 trademark, and mask work (within the meaning of
3 section 901 of title 17, United States Code) infor-
4 mation for each nation for at least the 2 most
5 recent years;

6 (L) general labor market information;

7 (M) internationally comparable wage rates;

8 (N) foreign and domestic—

9 (i) unemployment rates;

10 (ii) availability of skilled and profession-
11 al workers;

12 (iii) hiring and firing restrictions; and

13 (iv) labor productivity trends;

14 (O) comparative international tax rate infor-
15 mation;

16 (P) export financing information, including
17 the availability of funds for United States export-
18 ers and foreign competitors;

19 (Q) information regarding the trade actions of
20 foreign governments;

21 (R) information concerning capital markets,
22 interest rates, and the cost and availability of
23 capital;

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Code) infor-

(S) National Input and Output Tables compiled by the Department of Commerce for the United States and other nations; and

the 2 most
tion;

(T) any other information that the Committee determines to be useful in carrying out the purposes of this section.

age rates;

(3) The National Trade Data Bank which is required to be established under paragraph (1) shall—

(A) be designed to utilize state-of-the-art data processing and retrieval equipment in monitoring, organizing, analyzing, and disseminating the information described in paragraph (2),

ons; and
;

(B) use the most effective and meaningful means of organizing and making such information available to—

rate infor-

(i) United States business firms,

(ii) United States workers,

(iii) United States industry associations,

(iv) United States agricultural interests,

(v) State and local economic development agencies, and

(vi) other interested United States persons who could benefit from such information, and

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1 (C) be of such quality and in such form as to
2 assist coordinated trade strategies for the United
3 States.

4 (4) The National Trade Data Bank established
5 pursuant to paragraph (1) shall—

6 (A) collect and disseminate—

7 (i) information on service sector eco-
8 nomic activity that is at least as complete
9 and timely as information on economic activi-
10 ty in the merchandise sector, and

11 (ii) a broad base of monthly information
12 on the service sector of the economy, and

13 (B) provide—

14 (i) a new benchmark survey of unaffili-
15 ated service transactions, including (but not
16 limited to)—

17 (I) banking services,

18 (II) computer software services,

19 (III) brokerage services,

20 (IV) transportation services,

21 (V) travel services,

22 (VI) engineering services, and

23 (VII) construction services, and

24 (ii) an index of leading indicators which
25 includes measurement of service sector activ-

form as to
the United
established

1 ity in direct proportion to the contribution of
2 the service sector to the gross national prod-
3 uct of the United States.

established

4 (5) The National Trade Data Bank established
5 pursuant to paragraph (1) shall not include any infor-
6 mation—

ector eco-
s complete

7 (A) which is collected by the Federal Gov-
8 ernment in connection with any investigation, and

omic activi-
information
y, and

9 (B) the disclosure of which to the public is
10 prohibited under any other provision of law.

information
y, and

11 (6) In carrying out the provisions of this section,
12 the Committee shall consult with—

of unaffili-
g (but not

13 (A) advisory committees established under
14 section 135 of the Trade Act of 1974 (19 U.S.C.
15 2155), and

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es,

16 (B) other representatives of the private
17 sector.

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18 (c) COOPERATION.—Each Federal department and
19 agency shall cooperate with the Committee by making infor-
20 mation available for assimilation into the National Trade
21 Data Bank.

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ctor activ-

22 (d) REPORTS.—By no later than December 31 of each
23 calendar year, the Committee shall submit a report to
24 Congress—

1 (A) assessing the current quality, comprehensive-
2 ness, and public and private accessibility of trade data;

3 (B) describing actions taken pursuant to this sec-
4 tion, particularly—

5 (i) actions taken during the 3-month period
6 beginning on the date of enactment of this Act to
7 provide the new benchmark survey described in
8 subsection (b)(4)(B)(i), and

9 (ii) action taken during the 1-year period be-
10 ginning on the date of enactment of this Act to
11 provide the information on services described in
12 subparagraphs (A) and (B)(ii) of subsection (b)(4).

13 (C) describing actions planned to be taken pursu-
14 ant to this section;

15 (D) recommending executive and legislative ac-
16 tions which would ensure that United States citizens
17 and firms obtain access to the data banks of foreign
18 countries that is similar to the access provided foreign
19 citizens and firms to the National Trade Data Bank es-
20 tablished pursuant to subsection (b)(1); and

21 (E) recommending other legislative actions which
22 further the purposes of this section.

23 (e) COORDINATION WITH OFFICE OF INFORMATION.—
24 Section 3518 of title 44, United States Code, is amended by
25 adding at the end thereof the following new subsection:

1 “(f) The provisions of this chapter shall not apply with
2 respect to—

3 “(1) economic and trade data described in section
4 603(b) of the Omnibus Trade Act of 1986 and any
5 other economic or trade data which the National Trade
6 Data Committee determines to include in the National
7 Trade Data Bank established under section 603(b)(1) of
8 such Act,

9 “(2) any actions taken by the National Trade
10 Data Committee under the authority of section 603 of
11 such Act, and

12 “(3) any actions taken by any officers or employ-
13 ees of the Federal Government in cooperating with re-
14 quests made by the National Trade Data Committee
15 for the purposes of carrying out the provisions of sec-
16 tion 603 of such Act.”.

17 **TITLE VII—AGRICULTURE**

18 **SEC. 701. CRISIS IN AGRICULTURAL TRADE.**

19 (a) FINDINGS.—Congress finds that—

20 (1) United States agricultural exports declined by
21 more than 37 percent since 1981, from \$43.8 billion
22 per year to \$27.5 billion per year;

23 (2) the United States' market share of agricultural
24 commodities and products has dropped worldwide by
25 28 percent during the last 5 years;